

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN G. JOHNSON
4010 Shaker Run Circle
Fairfield, CA 94533

Plaintiff,

V.

UNITED STATES AIR FORCE
1670 Air Force Pentagon
Washington, DC 20330-1670

Defendant.

Case No: 19-cv-1741

COMPLAINT

I. INTRODUCTION

1. Plaintiff Allan G. Johnson (“Plaintiff”) brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et. seq.*, by Defendant United States Air Force (“USAF”) in failing to provide Plaintiff with all non-exempt records responsive to his August 29, 2016, December 17, 2018, August 14, 2015, and July 5, 2016, FOIA requests sent to this federal agency, seeking copies of records of aircraft inventory and budget data, as well as copies of records regarding that agency’s policies and decisions pertaining to the public release of Controlled Unclassified Information (CUI).

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff, Allan G. Johnson, is an individual who, at all times relevant herein, has resided in Fairfield, California, which is located in Solano County, California.

5. Defendant United States Air Force is a federal agency of the United States, and sub-component of the United States Department of Defense, and as such, is an agency subject to the FOIA, pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for

responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

VI. FACTUAL ALLEGATIONS

August 29, 2016 FOIA Request

13. On or about August 29, 2016, Plaintiff sent a FOIA request to the United States Air Force (USAF), seeking copies of records that describe all aircraft in the active inventory, including aircraft operated by the Air National Guard, the Air Force Reserve Command, and all active duty operating commands or equivalents for the period of September 30, 2001, through June 30, 2016.

14. On or about September 14, 2016, Plaintiff received in the mail a United States Post Office (USPS) return receipt stating that his August 29, 2016 FOIA request had been received via certified mail by the USAF on September 2, 2016.

15. On or about November 8, 2017, December 13, 2017, and January 2, 2018, Plaintiff sent emails to Defendant USAF requesting the status of his August 29, 2016, FOIA request.

16. On or about May 22, 2018, Defendant sent an email to Plaintiff, stating that Defendant had never received Plaintiff's August 29, 2016, FOIA request, and therefore it was never entered into the system.

17. On or about March 11, 2019, Plaintiff sent an email to USAF stating that Plaintiff was re-sending his August 29, 2016, FOIA request to Defendant via email and via United States Postal Service (certified mail). Plaintiff also resent his August 29, 2016, FOIA request via Federal Express on or about March 13, 2019, as well as sending an additional copy of this FOIA request to the USAF via facsimile on March 19, 2019.

18. As of the date of the filing of this action, Plaintiff has still not received a tracking number, or any agency decision, or any of the records which he has requested in his August 29, 2016, FOIA request to the USAF referenced above.

December 17, 2018, FOIA Request

19. On or about December 17, 2018, Plaintiff sent a FOIA request to the United States Air Force (USAF), seeking copies of records of all documents, including communications, regulations, instructions, policy letters, and messages, regarding the U.S. Air Force's policies and practices concerning their public release of Controlled Unclassified Information (CUI).

20. On or about January 23, 2019, Plaintiff sent an email to Defendant USAF requesting the status and the case number assigned to his December 17, 2018, FOIA request.

21. On or about January 23, 2019, USAF sent an email to Plaintiff, requesting clarification as to which of his FOIA requests that he was requesting status information.

22. On or about January 23, 2019, Plaintiff Johnson sent an email response to USAF indicating that he was requesting the status of his December 17, 2018, FOIA request, and requesting a case number for that request.

23. As of the date of the filing of this action Plaintiff has still not received a tracking number, any agency decision, or any of the records which he requested in his December 17, 2018, FOIA request to the USAF.

August 14, 2015, FOIA Request

24. On or about August 14, 2015, Plaintiff sent a FOIA request to the United States Air Force (USAF), seeking copies of Budget Exhibit OP-78 (Force Structure Data for fiscal year 2016), Budget Exhibit PB-20 (Aircraft Inventory for fiscal year 2016), Four data sheets, one for each for 2011, 2012, 2013, and 2014, that display Total Force Programmed TAI by Mission as of the end of the fiscal year, and records that account for any aircraft operated by Air Force Special Operations Command (AFSOC) and/or the Air Mobility Command that may not be included in Budget Exhibit PB-20.

25. On or about August 17, 2015, Defendant USAF sent a letter to Plaintiff acknowledging receipt of Plaintiff's August 14, 2015, FOIA request, and assigning it as FOIA case #2015-05457-F.

26. On or about November 16, 2015, Plaintiff sent an email to Defendant requesting the status of his August 14, 2015, FOIA request.

27. On or about November 16, 2015, the USAF sent an email to Plaintiff stating that they would need to get back with him later regarding the status of this FOIA request.

28. On or about February 9, 2016, Plaintiff Johnson sent another email to the USAF, once again inquiring as to the status of Plaintiff's August 14, 2015, FOIA request.

29. On or about February 9, 2016, Defendant USAF sent an email to Plaintiff stating that Plaintiff's FOIA request was still being processed.

30. On or about April 8, 2016, and April 22, 2016, Plaintiff sent additional emails to the USAF, inquiring as to the status of Plaintiff's August 14, 2015, FOIA request.

31. On or about April 25, 2016, the USAF sent an email to Plaintiff Johnson informing him that they were seeking to internally determine the status of Plaintiff's FOIA request.

32. On or about June 30, 2016, USAF sent a final response to Plaintiff, along with some records responsive to Plaintiff's August 14, 2015, FOIA request.

33. On or about August 16, 2016, Plaintiff timely filed an administrative appeal of Defendant USAF's final decision in Plaintiff's August 14, 2015, FOIA request.

34. On or about September 8, 2016, USAF sent a letter to Plaintiff acknowledging their receipt of Plaintiff's administrative appeal, and noting that the agency was assigning this FOIA appeal as reference number 2016-00200-A.

35. On or about November 8, 2017, and December 14, 2017, Plaintiff sent emails to Defendant USAF, requesting the status of Plaintiff's administrative appeal.

36. On or about April 24, 2018, Plaintiff sent an email to Defendant informing the USAF of his new email address.

37. On or about April 25, 2018, Defendant responded to Plaintiff's April 24, 2018 email, stating that the individual at the USAF FOIA office who was sent Plaintiff's April 24, 2018 email no longer worked in the agency's FOIA office, but that Plaintiff's email would be forwarded to the current USAF HAF FOIA workflow staff.

38. On or about May 21, 2018, Plaintiff sent another email to the USA, once again inquiring as to the status of his administrative appeal identified as reference number 2016-00200-A.

39. On or about May 21, 2018, the USAF sent an email to Plaintiff Johnson stating that his August 16, 2016 FOIA administrative appeal was still being processed.

40. On or about February 27, 2019, Plaintiff Johnson sent an email to the USAF, once again requesting the status of his administrative appeal.

41. As of the date of the filing of this action Plaintiff has not received a final decision on his August 16, 2016 FOIA administrative appeal, identified as appeal number 2016-00200-A.

July 5, 2016, FOIA Request

42. On or about July 5, 2016, Plaintiff sent a FOIA request to the United States Air Force (USAF), seeking copies of Budget Exhibit OP-78 (Force Structure Data for fiscal year 2017), Budget Exhibit PB-20 (Aircraft Inventory for fiscal year 2017), the 2015 Total Force Programmed TAI by Mission data sheet, and any records that account for aircraft operated by Air Force Special Operations Command (AFSOC) and/or the Air Mobility Command that may not be included in Budget Exhibit PB-20.

41. On or about July 5, 2016, USAF sent a response to Plaintiff, acknowledging receipt of Plaintiff Johnson's July 5, 2016, FOIA request, and assigning this record request as case #2016-03618-F.

42. On or about August 12, 2016, USAF sent an email to Plaintiff, indicating that the agency was still processing Plaintiff's July 5, 2016 FOIA request, and indicating a need for additional time to process this record request.

43. On or about August 19, 2016, the USAF sent an email communication with an attachment of some records responsive to Plaintiff's July 5, 2016, FOIA request. However, this agency communication did not indicate that it was a final decision on Plaintiff's July 5, 2016, FOIA request, nor otherwise advise Plaintiff of any appeal rights or appeal deadlines, as required for an agency's final decision for a FOIA request.

44. On or about August 25, 2016, Plaintiff sent an email to Defendant USAF, inquiring whether the agency's August 19, 2016, response was an interim response or a final response to Plaintiff's July 5, 2016, FOIA request, as it had not addressed the full scope of Plaintiff's record request.

45. On or about November 8, 2017, Plaintiff Johnson sent an email to USAF, once again requesting the status of his July 5, 2016, FOIA request.

46. On or about November 13, 2017, USAF sent a response to Plaintiff's November 8, 2017, inquiry by re-sending him a copy of the agency's August 19, 2016, response.

47. On or about November 14, 2017, November 27, 2017, and December 14, 2017 Plaintiff sent emails to USAF, inquiring as to whether Defendant's August 19, 2016, response was an interim response or a final response to his July 5, 2016, FOIA request.

48. On or about December 15, 2017, the USAF sent an email to Plaintiff Johnson, indicating that the agency was waiting on a response from the Secretary of the Air Force for Financial Management and Comptroller (SAF/FM) regarding Plaintiff's request for information on USAF's August 19, 2016, release of information.

49. On or about January 2, 2018, Plaintiff sent another email to USAF again inquiring whether the August 19, 2016 response was an interim or final response.

50. On or about January 26, 2018, Defendant USAF sent an email to Plaintiff Johnson, stating that the estimated completion date for FOIA Request #2016-03618-F (Plaintiff's July 5, 2016, FOIA request) was "February 7" and that the agency was looking to other USAF components to answer part of Plaintiff's FOIA request.

51. On about February 13, 2018 and February 21, 2018, Plaintiff once again requested an update on the status of his July 5, 2016 FOIA request.

52. On or about February 21, 2018, USAF emailed Plaintiff indicating that it was still processing Plaintiff's FOIA request.

53. On or about April 24, 2018, Plaintiff sent an email to USAF indicating that he had changed email addresses and that any new correspondence should go to his new email address.

54. On or about May 21, 2018, USAF sent an email to Plaintiff indicating that Plaintiff's July 5, 2016, FOIA request was closed, with a final response made on August 19, 2016.

55. On or about May 21, 2018, Plaintiff sent an email to the USAF inquiring as to how the July 5, 2016, FOIA request was closed without a final decision response.

56. On or about May, 22, 2018, USAF sent an email to Plaintiff Johnson indicating that the final response to Plaintiff's July 5, 2016, FOIA request was made on August 19, 2016, and that Plaintiff had missed his 90-day appeal period.

57. As of the date of the filing of this action Plaintiff has still not received a final response, nor all non-exempt records sought by his July 5, 2016, FOIA request to the USAF described above.

VII. CLAIMS FOR RELIEF

First Claim: Plaintiff's August 29, 2016, FOIA Request

58. Plaintiff realleges, as if fully set forth herein, paragraphs 1-18 previously set forth herein.

59. Defendant USAF has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records for his August 29, 2016, FOIA request.

60. By failing to provide Plaintiff with all non-exempt responsive record to his August 29, 2016, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by the Freedom of Information Act.

61. Defendant USAF has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's August 29, 2016, FOIA request.

62. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's August 29, 2016, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

63. Unless enjoined by this Court, Defendant USAF will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his FOIA request described in paragraph 13 above.

64. Plaintiff is directly and adversely affected and aggrieved by Defendant USAF's failure to provide responsive records to his August 29, 2016, FOIA request described above.

65. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

66. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

Second Claim: Plaintiff's December 17, 2018, FOIA Request

67. Plaintiff realleges, as if fully set forth herein, paragraphs 1-12 and 19-23 previously set forth herein.

68. Defendant USAF has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records for his December 17, 2018, FOIA request.

69. By failing to provide Plaintiff with all non-exempt responsive record to his

December 17, 2018, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by the Freedom of Information Act.

70. Defendant USAF has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's December 17, 2018, FOIA request.

71. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's December 17, 2018, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

72. Unless enjoined by this Court, Defendant USAF will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his December 17, 2018, FOIA request described in paragraph 19 above.

73. Plaintiff is directly and adversely affected and aggrieved by Defendant USAF's failure to provide responsive records to his December 17, 2018, FOIA request.

74. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

75. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

Third Claim: Plaintiff's August 14, 2015, FOIA Request

76. Plaintiff realleges, as if fully set forth herein, paragraphs 1-12 and 24-41

previously set forth herein.

77. Defendant USAF has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records for his August 14, 2015, FOIA request.

78. By failing to provide Plaintiff with all non-exempt responsive record to his August 14, 2015, FOIA request as described in paragraph 24 above, Defendant USAF has denied Plaintiff's right to this information, as provided by the Freedom of Information Act.

79. Defendant USAF has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's August 14, 2015, FOIA request.

80. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's August 14, 2015, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

81. Unless enjoined by this Court, Defendant USAF will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his August 14, 2015, FOIA request described above.

82. Plaintiff is directly and adversely affected and aggrieved by Defendant USAF's failure to provide responsive records to his August 14, 2015, FOIA request described above.

83. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

84. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

Fourth Claim: Plaintiff's July 5, 2016, FOIA Request

85. Plaintiff realleges, as if fully set forth herein, paragraphs 1-12 and 42-57 previously set forth herein.

86. Defendant USAF has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records for his July 5, 2016, FOIA request.

87. By failing to provide Plaintiff with all non-exempt responsive record to his July 5, 2016, FOIA request described above, Defendant USAF has denied Plaintiff's right to this information as provided by the Freedom of Information Act.

88. Defendant USAF has violated FOIA by failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's July 5, 2016, FOIA request.

89. By failing to perform an adequate search reasonably calculated to locate all responsive records to Plaintiff's July 5, 2016, FOIA request, Defendant USAF has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act.

90. Unless enjoined by this Court, Defendant USAF will continue to violate Plaintiff's legal rights to be provided with copies of the records which he has requested in his July 5, 2016 FOIA request FOIA request described above.

91. Plaintiff is directly and adversely affected and aggrieved by Defendant USAF's failure to provide responsive records to his July 5, 2016, FOIA request described above.

92. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

93. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff, providing the following relief:

1. Declare Defendant USAF has violated FOIA by failing to provide Plaintiff with all non-exempt records responsive to his August 29, 2016, December 17, 2018, August 14, 2015, and July 5, 2016, FOIA requests.

2. Declare Defendant USAF has violated FOIA by failing to complete an adequate search for records responsive to Plaintiff's August 29, 2016, December 17, 2018, August 14, 2015, and July 5, 2016, FOIA requests.

3. Direct by injunction that Defendant USAF perform an adequate search for records responsive to his August 29, 2016, December 17, 2018, August 14, 2015, and July 5, 2016, FOIA requests, and provide Plaintiff with all non-exempt responsive records to Plaintiff's August 29, 2016, December 17, 2018, August 14, 2015, and July 5, 2016, FOIA requests.

4. Grant Plaintiff's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,

5. Provide such other relief as the Court deems just and proper.

DATED: This 14th day of June, 2019.

Respectfully submitted,

/s/
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